IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1768 OF 2006

Shri Krishna R. Kadam ... Appellant.

V/s.

Municipal Corporation of
Greater Bombay & anr. ... Respondents.

Mr. R.A. Thorat, for the Appellant.

Mr. J.J. Xavier, for the Respondent No.1.

CORAM : A.S. OKA, J.
DATE : AUGUST 14, 2006.

P.C. :

1. Heard Shri Thorat for the Appellant and Shri Xavier for the first Respondent.

2. By this First Appeal, the Appellant - Original Plaintiff has taken exception to the Judgment and Decree dated 19th April 2000, by which a suit filed by the Appellant was dismissed.

3. The Appellant filed a suit for injunction restraining the Respondents from demolishing of the suit premises admeasuring 10' X 20' more particularly described in paragraph No.1 of the plaint. According to the case of the Appellant, the land on which suit premises are situated is owned by the Respondent No.2. According to the Appellant, he was staying in the suit premises from the year 1980. It is alleged in the plaint that on 9th June 1997, a junior Engineer of the first Respondent

alongwith an Officer of the Second Respondent visited the suit premises and informed the Appellant that suit premises shall be demolished without giving any notice or intimation. The suit was filed on apprehension that the suit premises will be demolished without following the due process of law.

4. The learned Advocate appearing for the Appellant submitted that as the Appellant was in possession of the suit premises from the year 1980, the same cannot be demolished without following the process of law. He submitted that a limited relief of perpetual injunction could have been granted in favour of the Appellant. The learned Advocate for the Respondent No.1 invited my attention to the findings recorded by the trial Court and submitted that the suit premises have been unauthorisedly constructed.

5. I have considered the submissions. In the plaint, the Appellant has not stated that the suit premises has been constructed after obtaining permission of the Competent Authority. It is not a case of the Appellant that he acquired the suit premises from a third party and therefore, he was not aware about the authorisation. In fact the plaint is completely silent as regards mode of acquisition of the suit premises by the Appellant. In the plaint the Appellant has not claimed any title in respect of the suit premises. In the evidence, the Appellant

tried to make out the case that he has purchased the suit premises from one Bhimappa in the year 1980 for Rs.10,000/-. However, no documentary evidence of the said transaction could be produced by the Appellant.

6. The Appellant tried to claim protection on the ground that the land on which the suit premises was situated was declared as a slum area. However, he could not produce a notification declaring the land as a slum area. Reliance was placed on Government Resolution dated 1st November 1989 and it was contended that under the said Government Resolution, the Appellant is entitled to alternative accommodation. Perusal of the said Government Resolution shows that the same covers those cases where hutments are in the slum complex which is censused in 1976. Moreover, only in case of slums which have come up after 1980 and in case of hutments dwellers whose names appear in the electoral roll of the year 1985, the Resolution provides for grant of accommodation/site. No evidence was lead to show that the case of the Appellant is covered by the said Government Resolution. The Appellant could not establish any valid title in respect of the suit premises and could not establish that the construction of the suit premises has been carried out after obtaining permission of any Competent Authority. It must be noted here that the impugned Judgment and Decree was passed in the year 2000 and till today this Court has not granted any protection to the structure.

6. The learned Trial Judge was right in refusing to grant discretionary and equitable relief of perpetual injunction in favour of the Appellant. There is no merit in the Appeal.

7. Appeal is dismissed with no order as to costs.

JUDGE